Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-173

BRIAN KING, Petitioner

versus

MICHAEL NORRIS, Respondent

REPLY BRIEF TO THE PETITION FOR A WRIT OF CERTIORARI FROM THE LOUISIANA COURT OF APPEAL, THIRD CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term,1978

NUMBER

BRIAN KING, Petitioner

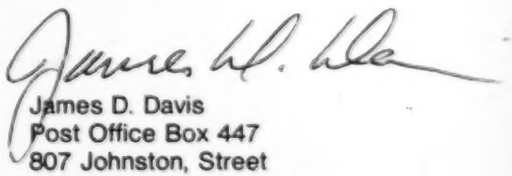
versus

MICHAEL NORRIS, Respondent

MOTION FOR LEAVE TO FILE BRIEF
IN RESPONSE TO PETITION FOR
WRIT OF CERTIORARI

Now comes the respondent and respectfully moves this Court for leave to file the annexed reply to the petition for writ of certiorari under Section 1257 (3) of Title 28, United States Code and Article 3, Section 2 of the Constitution of the United States directed to the Louisiana Court of Appeal, entered on January 16, 1978, writs refused by the Supreme Court of Louisiana May 5, 1978, pursuant to Supreme Court of the United States, Rule 40, and more particularly described in the reply and for such other further relief as may be just and proper.

KRAMER & DAVIS

BY: 

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IN THE
SUPREME COURT OF THE UNITED STATES

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BRIAN KING, Petitioner

versus

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RESPONSE TO PETITION FOR A WRIT
OF CERTIORARI FROM THE LOUISIANA
COURT OF APPEALS, THIRD CIRCUIT

Statement of the Case

Petitioner, Brian King, is the owner of a washateria located in Alexandria, Louisiana. For the protection of that business, Mr. King installed hidden cameras on the premises. In October, 1974, those cameras photographed the respondent, Michael Norris, on the premises. On November 4, 1974, respondent pleaded guilty to a charge of theft of less than $100.00, a misdemeanor. A one year suspended sentence and probation for one year was the punishment imposed.

Michael Norris, at that time, was barely 18 years of age.

Some five months after Michael Norris' conviction, Mr. King erected a bulletin board in his washateria, as is depicted by the reproduction accompanying his brief in support of his petition for writs to this Court.

The bulletin board remained posted with no changes until Michael Norris filed suit approximately seven months later.

Judgment was rendered by the Louisiana Ninth Judicial District Court on November 4, 1976 (19 months after the board was originally posted), enjoining Mr. King from displaying the board and awarding Michael Norris $500.00 damage.

From that judgment, an appeal was perfected to the Louisiana Court of Appeal, Third Circuit. Judgment of that Court was rendered on January 16, 1978, affirming the judgment of the District Court. Rehearing in that case was denied March 1, 1978.

On March 30, 1978, an application for writ of certiorari or review was filed with the Supreme Court of Louisiana. On May 5, 1978, the application was denied by the Supreme Court of Louisiana, the highest Court in the State. Subsequent to the denial of writs on May 5, 1978, Mr. King applied for writs to this Honorable Court.

Argument

An impressive array of questions, arguments and authority has been presented by petitioner, Brian King, in support of granting a writ of certiorari and review to this honorable Court.

Several of the questions raised by petitioner, Brian King, were not considered by the trial Court (Ninth Judicial District Court of Louisiana) in rendering its decision in favor of Michael Norris.

In passing, those questions revolve around an individual's right to publish truthful information about a convicted criminal. The trial Court determined that for a period of time following the incident of October, 1974, and the conviction in November, 1975, Brian King had the right to discuss the events and publish same on his bulletin board. It should be noted that Mr. King did not immediately publish this information, but allowed a period of five months to elapse.

Almost two years following his conviction and sentence, and almost one year from the day of completion of his sentence, Michael Norris was able to obtain the relief he sought, removal of the offending bulletin board. However, such relief has been short lived, as the board has again been posted nearly four years following the incident.

The trial Court, as well as the Third Circuit Court of Appeal of the State of Louisiana, determined that the substantive law of Louisiana allows every citizen to a right of privacy, or more appropriately, a right to be left alone. See Lambert v. Dow Chemical Company, 215 So. 2d 673 (1st Cir. 1968), and cases cited therein. This cause of action, or substantive right, evolved in order to protect citizens from the intentional infliction of mental anguish, humiliation and embarrassment. Additionally, this cause of action was available, even if what was said or published was true, if in fact, the motivation for the statements was personal economic gain or harassment of the declarant. See Tuyes v. Chambers, 81 So. 2d 265 (La. Sup. Ct., 1919).

Both lower courts of the State of Louisiana found that the motivation for the appropriation of respondent Norris' name was for the personal economic gain of Brian King in protecting his business and collection of the debt owed by Norris to King. Both courts expressed the theory that public interest in the events which transpired in late 1974 had waned if, in fact, there ever was any interest to begin with. The continued publication of those events with respondent's name, picture and address served no useful purpose, save Brian King's.

In answer to these determinations, Brian King has sought refuge in the 1st Amendment of the Constitution and erects a facade of reasoning to elevate his actions to that noble level of being the last true defender of the "public's right to know". None of the cases cited by Brian King state that any party, press or individual may appropriate for his economic benefit, the name and likeness and continue to publish daily an event from that person's past. His suggested theory of the pervasiveness of the 1st Amendment would support by analogy any personal vendetta wherein the medium of revenge employed was the daily advertisement of any derogatory or scurrilous event in any person's life

Petitioner suggests that to uphold the lower court's decision would make serious inroads into the free dissemination of information in the United States. Such is not the case, the lower court's decisions do not expunge or seclude from the public domain the public records which contain the very same information; they merely enjoin Brian King's appropriation of Michael Norris' name and likeness for his economic benefit.

Both lower courts recognize that the passage of time erodes the public's interest in an isolated misdemeanor theft wherein the actors were not of great reputation or position.

Conclusion

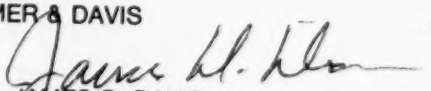
To adopt petitioner's reasoning would mean that Michael Norris, a young man, rehabilitated to the ways of society, but also a convicted criminal for misdemeanor theft, will now again be denied the anonymity that living in a country of 200 million people provides. Now again, nearly four years following a young man's indiscretion, his picture, name and address, form a part of another public record, this Honorable Court's record, with its attendant publicity and public import.

Much discussion of the Briscoe v. Reader's Digest Association 486 P. 2d 34 (1971) case has been included in court opinions and arguments connected to the instant case. Basically, that discussion has centered around the "thief" on the cross being allowed to repent and rehabilitate himself, and that therefore, the states have an interest in allowing modern day criminals to rehabilitate themselves. That is just, but it is also clear that the biblical thief's name, likeness and address were withheld, such relief Michael Norris has been denied.

Respondent respectfully submits and prays that petitioner's application be denied at his cost and that the judgment from which relief is sought become final and executory in all respects.

Respectfully submitted,

KRAMER & DAVIS

BY: 

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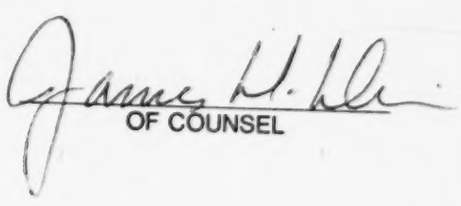
CERTIFICATE

I hereby certify that three (3) copies of the above and foregoing Reply Brief to the Petition for Writ of Certiorari have been mailed to Mr. Frank M. Brame, 426 Kirby Street, Lake Charles, Louisiana, 70601, and Mr. Mack E. Barham, 1800 First National Bank of Commerce Building, New Orleans, Louisiana, 70112, by placing same in the United States Mail, this date, properly addressed, and postage prepaid.

Alexandria, Louisiana, this 11 day of October, 1978.



OF COUNSEL